

STATE OF MICHIGAN
COURT OF APPEALS

In re G. M. HENDERSON, Minor.

UNPUBLISHED
April 26, 2016

No. 330358
Calhoun Circuit Court
Family Division
LC No. 2015-001904-NA

Before: SAWYER, P. J., and MURPHY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(g) (failure to provide proper care and custody), (i) (parent’s rights to sibling has been terminated due to chronic neglect and rehabilitation has been unsuccessful), (j) (child will be harmed if returned to parent’s home), and (l) (parent’s rights to another child terminated as a result of proceedings under MCL 712A.2(b)).¹ We affirm.

Respondent argues that the trial court did not consider the fact that her parental rights were protected by the United States Constitution, as evidenced by the fact that by the time of termination, the issues that brought the minor child into care were resolved. Both the United States and Michigan constitutions provide that a state may not deprive a person of life, liberty, or property without due process of law. US Const, Am XIV; Const 1963, art 1, § 17; *Hinky Dinky Supermarket, Inc v Dep’t of Community Health*, 261 Mich App 604, 605; 683 NW2d 759 (2004). Parents have a liberty interest protected by due process in regard to the companionship, care, custody, and management of their children. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). However, in *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000), our Supreme Court held that “[o]nce the petitioner has presented clear and convincing evidence that persuades the court that at least one ground for termination is established . . . the liberty interest of the parent no longer includes the right to custody and control of the children.” Thus, to terminate parental rights, a trial court must find the existence of a statutory ground for termination in MCL 712A.19b has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). Only one statutory ground for termination must be established. *Trejo Minors*, 462 Mich at 360. As discussed below, the trial court properly

¹ The trial court also terminated father’s parental rights to the minor child under MCL 712A.19b(3)(g), (i), (j), and (l). Father has not appealed that decision.

found statutory grounds for termination under the sections cited above. Accordingly, at the time of termination, respondent's liberty interest in her child no longer included the right to custody and control of the child. *Trejo Minors*, 462 Mich at 355. Respondent does not demonstrate a constitutional error in the trial court's termination of her parental rights. *In re B & J*, 279 Mich App 12, 18; 756 NW2d 234 (2008) (review is de novo).

To the extent respondent's arguments challenge the trial court's findings regarding the statutory grounds for termination and the minor child's best interests, a trial court's factual findings in terminating parental rights, including a finding that a ground for termination has been established and that termination is in a child's best interests, are reviewed for clear error. MCR 3.977(K); *Trejo Minors*, 462 Mich at 356-357.

Termination is proper under MCL 712A.19b(3)(g) where a "parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." Here, respondent clearly failed to provide proper care and custody for the young child.

During a child protective case that led to respondent releasing her parental rights to three children in 2007, respondent was convicted of child abuse, and respondent had issues with substance abuse and housing. At the time of the minor child's removal in this case, respondent was dependent on Tramadol, a schedule 3 narcotic-like pain reliever prescription-only drug, for which she did not have prescription and was in fact purchasing it illegally from a neighbor. Additionally, respondent's psychological evaluation revealed that she had a personality disorder and that she continued to be at risk for patterns of abuse and neglect. Respondent's struggles continued despite the fact that she received two years of services before she released her parental rights to three children in 2007, and 1-1/2 years of services before the minor child's removal during this case. Clearly respondent failed to provide proper care and custody.

Moreover, the evidence supported that she would not be able to provide proper care and custody within a reasonable time considering the child's age, regardless of her claim that her issues were resolved. Between respondent's adjudication and the termination of her parental rights approximately four months later, respondent received services, including individual and substance abuse counseling through Summit Pointe, substance abuse counseling through Psychological Consultants, multiple parenting classes, random drug screens, and parenting times. The Summit Pointe program offered respondent a total of 28 appointments that included individual counseling, group sessions, and medication review. Of those 28 possible appointments, respondent only attended 12. Thus, respondent only partially complied with her counseling services.

Regarding respondent's substance abuse, during respondent's 112 days of random drug testing, she called on only 69 days of those days, despite the fact that the testing program required her to call each day to ask whether drug testing would be required. Further, of the 69 days when respondent called, respondent failed on three occasions to report to the program for random drug testing. There was another occasion when respondent completed a random screen, but the screen was ruled invalid because the temperature of the urine specimen was outside the range for normal urine. And, on August 5, 2015, respondent tested positive for Hydrocodone.

Respondent did not have a valid prescription for Hydrocodone at that time. Additionally, respondent previously admitted an addiction to Tramadol, but from May 2015 to September 2015, respondent obtained a total of nine prescriptions for Tramadol. There was no indication in record regarding what respondent did with those prescriptions.

Accordingly, the record showed that respondent was not fully compliant with her mental health and substance abuse services. Moreover, a parent's mere participation in and benefit from services is insufficient; rather, a parent must demonstrate sufficient compliance with and benefit from services to address the problem targeted by those services. *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Here, there was no evidence that respondent sufficiently benefited from her mental health and substance abuse services to address those issues.

A trial court may rely on a respondent's history of failing to provide proper care and custody in finding that there was no reasonable expectation that the respondent would be able to provide proper care and custody within a reasonable time. *In re Archer*, 277 Mich App 71, 75-76; 744 NW2d 1 (2007). Here, respondent had a history of failing to provide proper care and custody and of failing to fully participate in and benefit from services regarding her substance abuse and mental health. On this record, the trial court did not clearly err in finding that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time considering the child's age. The trial court did not clearly err in finding a statutory ground for termination under MCL 712A.19b(3)(g). MCR 3.977(K); *Trejo Minors*, 462 Mich at 356-357. And, there was no constitutional error in this case. *In re B & J*, 279 Mich App at 18.

Because only one statutory ground for termination must be established, *Trejo Minors*, 462 Mich at 360, and we affirm termination under (g), we do not address in detail the other grounds alleged under MCL 712A.19b(3)(i), (j), and (l). However, the trial court specifically found that respondent's parental rights were previously terminated regarding siblings of the child in this case and that had been for child abuse and in fact respondent agreed to those facts. Clearly MCL 712A.19b(3)(i) and MCL 712A.19(3)(l) were established. Respondent's continued abuse of Tramadol and buying same from a neighbor also established grounds under MCL 712A.19b(3)(j).

In reaching our conclusion, we are mindful that mother's case manager with Woman's Co-Op testified that mother would be able to provide care for the child within 90 days. However, the trial court, in the face of overwhelming testimony to the contrary, did not credit this testimony. We defer to the trial court's special ability to judge the credibility of witnesses. *In re LaFrance Minors*, 306 Mich App 713, 723; 858 NW2d 143 (2014).

Regarding the minor child's best interests, after a trial court has established a statutory ground for termination by clear and convincing evidence, the trial court shall order termination of parental rights if it finds by a preponderance of the evidence "that termination of parental rights is in the child's best interests[.]" MCL 712A.19b(5); see *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). Here, respondent's history of struggles with substance abuse, the advantages of the minor child's foster home over respondent's home, and the lack of a bond between the child and respondent all weighed in favor of a finding that termination was in the child's best interests. *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144

(2012); *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009). Additionally, respondent's argument that the trial court did not take testimony or consider any appropriate factors regarding the minor child's best interests is not supported by the record. The trial court did not clearly err in finding that termination of respondent's parental rights was in the minor child's best interests. MCR 3.977(K); *Trejo Minors*, 462 Mich at 356-357.

Affirmed.

/s/ David H. Sawyer

/s/ William B. Murphy

/s/ Amy Ronayne Krause